

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to applied behavior analysis services delivered by registered behavior technicians

The Human Services Department hereby amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

This rule making allows registered behavior technicians (RBTs) to deliver applied behavior analysis (ABA) services under the direct supervision of behavior analysts or assistant behavior analysts licensed pursuant to Iowa Code chapter 154D. Claims for payment for such services must be submitted by the licensed supervisor.

ABA services are covered as a benefit under Medicaid. This rule making recognizes a new level of certification to provide a pathway for staff under the supervision of a board-certified behavior analyst (BCBA) to provide services to enrolled members. BCBAs must directly supervise individuals working in this new provider class.

This rule making outlines the qualifications for a registered behavior technician, the treatment limitations, and how claims must be submitted. It will also position providers to expand their organizations by creating positions for registered behavior technicians.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 20, 2022, as **ARC 6300C**.

The Department received 11 comments from four respondents on the proposed rule making. The comments and corresponding responses from the Department are divided into three topic areas as follows:

General:

Comment 1: A respondent asked for clarification around the intent of the rule change. Specifically, the respondent questioned whether the intent was to add RBTs to the pool of providers eligible to deliver ABA services billed to Iowa Medicaid.

Response 1: The rule making is intended to allow providers to bill for services delivered by a credentialed RBT. The educational requirement for obtaining an RBT credential is a high school diploma or its equivalent. There was not previously a pathway for an individual without a bachelor’s degree to deliver ABA services billed to Iowa Medicaid. This rule making creates one and, as such, expands the eligible provider pool.

Comment 2: A respondent requested that a work group be created to facilitate ongoing discussion of this rule making, address concerns not addressed in the existing rule making, and explore alternate ways Iowa Medicaid can support providers in increasing their capacity to provide ABA services to Medicaid members.

Response 2: The Department agrees that a work group is an appropriate forum to determine how best to support providers and increase the accessibility of quality ABA services statewide. A work group will be convened prior to July 1, 2023.

Comment 3: A respondent noted that the respondent does not support state licensure of RBTs.

Response 3: The Department agrees and is not pursuing that action as part of this rule making.

Bachelor's Degree Requirement:

Comment 1: A respondent recommended the subrule be expanded to include individuals with any bachelor's degree and 40 hours of ABA training.

Response 1: The subrule has been revised so that individuals with any bachelor's degree are eligible to provide ABA services billed to Iowa Medicaid.

Comment 2: A respondent stated that an individual currently holding a bachelor's degree and working as a behavior technician should not have to submit an exception to policy to become eligible to provide billable services.

Response 2: The subrule as revised and adopted allows for an individual with any bachelor's degree to provide ABA services billed to Iowa Medicaid.

Comment 3: A respondent noted that it seems inconsistent to require specialized bachelor's degrees when RBT credentialing requires only a high school diploma or its equivalent.

Response 3: The Department agrees and has removed the language indicating that an individual must hold a specific bachelor's degree to be eligible to provide billable services.

Comment 4: A respondent requested that, given workforce shortages, Iowa Medicaid allow individuals with any bachelor's degree to deliver billable services.

Response 4: The Department has revised the subrule to allow individuals with any bachelor's degree to deliver billable services.

Delivering Services Prior to Obtaining an RBT Credential:

Comment 1: A respondent commented that staff hired without a bachelor's degree should be eligible to provide billable services for a 45- to 60-day window of time while they work to obtain an RBT credential.

Response 1: The Department did not make the requested change to the rule making. The Department has a responsibility to ensure that individuals providing services to Medicaid members have demonstrated competency in delivering those services. Individuals with bachelor's degrees are eligible under the new subrule to provide billable services without obtaining an RBT credential. For an individual without a bachelor's degree to be eligible to provide billable services, the individual must be credentialed as an RBT, which provides assurance that relevant competencies have been demonstrated.

Comment 2: A respondent indicated that a window of time (for example, 90 days) that allows an employee to deliver billable services while working to obtain RBT credentials would prevent long stretches of time where someone cannot bill for services, but should be getting paid by the person's employer.

Response 2: The Department did not make the requested change to the rule making, for the reasons stated in the response to the previous comment. Staff training is not a covered benefit under the Medicaid program.

Comment 3: A respondent suggested mirroring language found in Iowa Code section 154D.4(3)“g,” which would allow individuals “pursuing supervised experience in applied behavior analysis consistent with the experience requirements of a certifying entity” to deliver ABA services billed to Medicaid.

Response 3: The Department did not make the requested change to the rule making, for the reasons stated in the response to the first comment in this topic area.

Comment 4: A respondent commented that the requirements do not align with Iowa Code sections 154D.4(3)“c,” “f,” and “g.”

Response 4: The introductory wording of Iowa Code section 154D.4(3) states that “this chapter and chapter 147 do not prevent or restrict the practice of applied behavior analysis by any of the following:” and is then followed by a list of specific exemptions. There is a difference between being allowed to practice under Iowa law and being eligible to participate in the Medicaid program. The Medicaid program operates under the authority of the Centers for Medicare and Medicaid Services (CMS).

After receipt of comments, the Department revised subparagraph 77.26(10)“a”(2) to remove the requirement that a bachelor’s degree be in specific areas. The Department made no other changes to the rule making.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on June 9, 2022.

Fiscal Impact

ABA services are provided today by BCBAs and assistant BCBAs. A limited number of ABA providers practice in the state currently, and expanding that workforce could increase the utilization of services, but it is unknown what the increase in utilization would be. ABA services are currently covered under Medicaid as a benefit. The subrule recognizes a new level of certification to provide a pathway for staff under the supervision of a BCBA. BCBAs must directly supervise individuals working in this new provider class. The number of BCBAs practicing across the state would limit overall utilization. The fiscal impact is expected to be minimal. Any expenditures will be absorbed within the medical assistance appropriation.

Jobs Impact

The rules will position providers to expand their organizations by creating positions for registered behavior technicians. Specific projections are not available.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 1, 2022.

The following rule-making action is adopted:

Adopt the following **new** subrule 77.26(10):

77.26(10) Registered behavior technicians.

- a. A person is eligible to participate as a registered behavior technician when the person holds:
 - (1) A current certification from the Behavior Analyst Certification Board as a registered behavior technician; or
 - (2) A bachelor’s degree.

b. A registered behavior technician must provide treatment under the supervision of a behavior analyst or assistant behavior analyst licensed pursuant to Iowa Code chapter 154D. Claims for payment for such services must be submitted by the supervising licensed behavior analyst.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/22.